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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re V. S., a Person Coming Under the Juvenile Court Law.	B203206 (Los Angeles County Super. Ct. No. FJ38245)
THE PEOPLE, Plaintiff and Respondent, v. V. S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robin Miller-Sloan, Judge. Modified and affirmed.

Torres & Torres and Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Steven D. Matthews and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

V. S., a minor, appeals from the order adjudicating him a ward of the juvenile court pursuant to Welfare and Institutions Code section 602. He claims there was insufficient evidence of force or fear to support the court's findings of forcible oral copulation and forcible sodomy. Appellant also claims the minute order stating the terms and conditions of probation must be modified to reflect the oral pronouncement, and that the term ordering him not to possess narcotics is overbroad to the extent it prohibits use of narcotics or controlled substances which are medically necessary or ordered by a doctor. We find sufficient evidence supports the sustained findings, but we agree with appellant that the terms and conditions of probation must be modified.

FACTUAL AND PROCEDURAL SUMMARY

J. S., a 26-year-old male, lived in an apartment complex on Montrose Street in Los Angeles. He often saw appellant around the complex with his friends, "[m]ostly drinking, smoking weed, and doing other drugs in our parking lot." Appellant, who was almost 16 years old, frequently asked J. S. for cigarettes. J. S. felt intimidated by appellant and his friends, and gave them cigarettes to keep them from destroying his property.

On the afternoon of August 27, 2007, appellant went to J. S.'s apartment to ask for a cigarette. J. S. invited appellant into the apartment, and they sat and talked for a while. Appellant left the apartment, and returned an hour or so later with his dogs. He left, then returned for a third time a short while later. J. S. was on the deck outside his bedroom, drawing in a notebook.

J. S. asked appellant if he wanted to work on some drawings. Appellant joined J. S. on the deck and began to draw. He showed J. S. his drawings, which included his tags and his friends' tags. He grew more and more demanding, insisting that J. S. look at his work; J. S. felt intimidated by appellant's controlling tone.

Appellant then began to talk to J. S. about J. S.'s sexuality, asking whether J. S. had oral sex with men. J. S. said he had. Appellant then asked, "What if I asked you to do that to me? What would you say?" J. S. said no, that he would want to talk to

appellant about his feelings; he also said appellant was too young. Appellant insisted he was almost 18 years old, but when J. S. still said no, appellant became more demanding. He then said, "What if I told you you had to?" J. S. became frightened; "all of a sudden . . . I stopped seeing a kid reaching out and seeing a kid who had an agenda." He was afraid "I would get my ass kicked" by appellant and the whole group of teens who stayed around the apartment complex.

J. S. went into his bedroom with appellant. Appellant closed the door. J. S. went to close the curtain, but appellant said "No, don't do that. We're fine." Appellant first demanded that J. S. put his hand in appellant's pants and play with appellant's penis. Next he demanded that J. S. orally copulate him. Then appellant told J. S. to bend over a chair and pull down his pants; he forced his penis into J. S.'s anus. When J. S. screamed that it hurt, appellant stopped and J. S. went back to using his mouth and his hand. Appellant stopped, went into the bathroom, and then warned J. S., "If you look at me wrong, if you say anything wrong in front of my friends, if you make any notice of this in front of my people, basically, you're dead. You'll get beat up." Appellant left the apartment.

J. S. went to the store to buy a beer. When he returned, he saw appellant talking to a neighbor. Appellant got up and left. When J. S. arrived at his apartment door, he found a threatening note in the same lettering appellant used in his drawings.

Soon after, appellant approached J. S.'s door. J. S. told appellant, "I didn't say anything. I didn't do anything." Appellant pointed toward the bedroom and told J. S. he "shouldn't have done that . . . ." He told J. S. to move out of the apartment building. When J. S. said he would not move out, appellant said they would have to fight. J. S. refused to fight. He got down on his knees and started praying. Appellant hit J. S. on the forehead, on the cheek, and in the nose area. Then he left.

J. S. knocked on his roommate's door and asked for a ride to the hospital. He was treated for a broken nose. He was examined by a nurse practitioner from a sexual assault examination team. J. S. was interviewed by Los Angeles police officers, who then went

to J. S.'s apartment and talked to his roommate. Appellant was still on the premises, and he was arrested.

A petition was filed pursuant to Welfare and Institutions Code section 602. The petition, as amended, alleged that appellant committed forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)),[1] sodomy by force or fear (§ 286, subd. (c)(2)), making criminal threats (§ 422), and battery resulting in great bodily injury (§ 243, subd. (d)).

The court found all allegations of the petition true and adjudicated appellant a ward of the court. He was committed to suitable placement under specified terms and conditions. The court declared all offenses to be felonies, and calculated appellant's maximum period of confinement to be 12 years. This is a timely appeal from the adjudication and disposition.

DISCUSSION

I

Appellant claims there was insufficient evidence of force or fear to support a true finding with regard to the allegations of oral copulation by force and sodomy by force. The same standard of review applies to the sufficiency of evidence in juvenile proceedings as in criminal proceedings. (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404.) "On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) We resolve all conflicts in the evidence and all questions of credibility in favor of the juvenile court's findings, and indulge every reasonable inference the court could have drawn from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.)

Section 288a, subdivision (c)(2) defines the crime of forcible oral copulation: "Any person who commits an act of oral copulation when the act is accomplished against

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[1] All statutory references are to the Penal Code unless otherwise indicated.

the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years."

Section 286, subdivision (c)(2) defines the crime of forcible sodomy: "Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years."

"In determining the existence of duress, force or fear, factors such as the position of dominance and authority of the defendant and his continuous exploitations of the victim may be considered." (*People v. Cardenas* (1994) 21 Cal.App.4th 927, 940.) In *People v. Guido* (2005) 125 Cal.App.4th 566, 576, the court held that "oral copulation by force within the meaning of section 288a, subdivision (c)(2) is proven when a jury finds beyond a reasonable doubt that defendant accomplished an act of oral copulation by the use of force sufficient to overcome the victim's will." The same standard applies to the forcible sodomy statute, section 286, subdivision (c)(2). (*Ibid*.)

The evidence was sufficient in this case to satisfy that standard. J. S. testified that prior to this incident, he was intimidated by appellant and his friends. He gave them cigarettes in the hope that they would not destroy his property. When appellant came to his apartment that day, he showed J. S. drawings of the tags he and his friends used. As their conversation continued, appellant grew more and more demanding. Appellant asked J. S. if he would perform oral sex on him, "[I]f I asked you to do that to me." When J. S. said no, appellant said, "What if I told you you had to." J. S. stated he felt like he had no option at that point, he was afraid "I would get my ass kicked," by appellant and his friends. Appellant's "demeanor was controlling, to say the least. It was all demands. It was all, you know, 'Do this. Do that. Put it in your mouth.'" Appellant then exerted physical force, putting his hands behind J. S.'s head and forcing him down. Asked how much force was exerted, J. S. said, "To the point of gagging me multiple times." J. S. attempted to pull his head back, but appellant pulled it back "again and

again." From this evidence, the court could conclude that appellant used duress and force sufficient to overcome J. S.'s will to accomplish the act of oral copulation.

The act of sodomy followed the oral copulation. J. S. already was afraid that if he refused to comply with appellant's demands, he would be beaten up by appellant and his friends. According to J. S., after the oral sex, appellant "told me to basically bend over my chair, and his exact words were, 'Open it up. Open it up,' and in which case, I did. And then, yes, forceful insertion. I screamed." Appellant put his hands on J. S.'s thighs, "and just shoved, pushed hard . . . ." "It was forceful, painful, and short-lived, thank God." When J. S. was examined for evidence of sexual assault, there were injuries on his leg and thighs. From this, the court could conclude that the sodomy also was accomplished by means of force sufficient to overcome J. S.'s will.

Appellant's testimony differed drastically from J. S.'s testimony; in appellant's version, J. S. was the aggressor, and he resisted. But the question of credibility was for the trial court, and the court credited the testimony of J. S. There was nothing incredible about that testimony, nor was it physically impossible for the events to have happened as J. S. testified. Neither the fact that J. S. was 10 years older than appellant, nor the fact that he was taller and heavier renders the finding of duress or force impossible. Appellant and his group of teenage friends intimidated J. S.; J. S. gave them cigarettes in the hope that this would keep them from harming his property. Appellant utilized this fear to create a position of power. From this position, he demanded that J. S. perform sexual acts, and then added physical force during the course of the sex acts.

II

Appellant challenges the portion of probation condition No. 21, which provides: "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; . . ." He argues that this condition is overbroad to the extent it prohibits him from possessing and using drugs ordered by a doctor. We agree.

"A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the

needs of the juvenile." (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) Respondent correctly notes that appellant had a history of marijuana possession and use, which justifies a probation condition generally prohibiting appellant from possession or using narcotics or controlled substances. But the condition is written so broadly that it also prohibits possession and use of medically necessary or prescribed narcotics or controlled substances. We find no rehabilitative purpose in preventing appellant from utilizing necessary medication in accordance with a valid prescription. Probation condition No. 21 should be modified to prohibit the use or possession of narcotics, controlled substances, poisons or related paraphernalia, "except in accordance with a valid prescription."

Appellant claims, and respondent agrees, that the minute order should be modified to reflect the probation conditions orally pronounced by the court. As to condition No. 4, the court ordered appellant to "Notify probation before you change your address, your school or school schedule." The words "place of employment" should be stricken from the minute order.

As to condition No. 21, the court did not order appellant to "stay away from places where known users congregate." That language must be stricken from the minute order. Conditions No. 41 and No. 45 should be removed entirely, as the court made no such orders.

DISPOSITION

The juvenile court is directed to prepare an amended minute order stating the conditions of probation, in accordance with the views expressed in this opinion; in all other respects, the order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.